

NTSB Order No. EA-5296

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 13<sup>th</sup> day of June, 2007

Respondent .

Docket SE-17703

Respondent appeals the written decision of Chief Administrative Law Judge William E. Fowler, Jr., served in this proceeding on June 15, 2006.<sup>1</sup> By that decision, the law judge dismissed respondent's appeal as untimely, and terminated the proceeding to address the Administrator's order of suspension of respondent's airman certificate.<sup>2</sup> We deny respondent's appeal.

<sup>2</sup> The Administrator's order sought a 30-day suspension of

The Administrator issued her order of suspension on November 14, 2005. On February 2, 2006, the Administrator ordered respondent to surrender his certificate. On April 11, 2006, the Safety Board's Office of Administrative Law Judges received an appeal from respondent, dated April 5, 2006. Respondent's appeal, which he submitted in the form of a letter as a pro se party, alleged that he had previously filed an appeal and did not understand why he received the Administrator's February 2, 2006 demand that he surrender his certificate. Respondent attached to this appeal a brief letter dated December 21, 2005, which states, "I am appealing the Order of Suspension the FAA issued dated Nov. 14, 2005 to the NTSB as stated in the FAA letter Order of Suspension dated Nov. 14, 2005." On April 14, 2006, the Administrator reissued her Order of Suspension as the Complaint, and stated that the Administrator did not receive the December 21 letter until April 11; as such, the Administrator asked the Safety Board to dismiss respondent's appeal as untimely. The law judge granted the Administrator's request, concluding that, even if respondent had actually submitted his Notice of Appeal on December 21, 2005, it still

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(..continued)

respondent's airman certificate with private pilot privileges, based on alleged violations of 14 C.F.R. §§ 91.13(a), 91.103, and 91.139(c), as well as 14 C.F.R. part 99.7. In particular, the Administrator's order alleged that respondent, on May 26, 2005, operated a Cessna C320 in an area in which Notice to Airman (NOTAM) FDC 3/2126 prohibited operation and provided special security instructions. The Administrator's order also alleged that respondent's operation of the aircraft in the area at issue risked interception by military aircraft and the possible use of deadly force.

would have been untimely under the governing regulations, and that respondent did not provide any reason for this tardiness.

In appealing the law judge's decision, respondent focuses on the law judge's conclusion that respondent did not submit a reply to the Administrator's request that the law judge dismiss respondent's appeal as untimely. Respondent argues that he did not receive notification that the Administrator was requesting dismissal. In addition, respondent states that his house was destroyed in a fire, and that he does not have a permanent mailing address; in support of this argument, respondent attached a fire marshal's report that shows that a fire took place at a residence in Hayes, Virginia, on September 15, 2005. Respondent asks the Safety Board to accept his appeal and allow the parties to argue the merits of the case. The Administrator did not reply to respondent's appeal.

The Safety Board's Rules of Practice have long established that parties must file appeals with the Board, "within 20 days after the date on which the Administrator's order was served on the respondent." 49 C.F.R. § 821.30(a). With regard to the date of service, section 821.7(a)(4) provides that a party has officially "served" a document on the mailing date shown on the certificate of service. Administrator v. Corrigan, NTSB Order No. EA-4806 (1999) (applying 49 U.S.C. § 46103(b), which specifies that, "[t]he date of service made by certified or registered mail is the date of mailing"). The Safety Board strictly applies this standard, and will only accept an appeal

that a party submits after the 20-day deadline has expired when the party shows good cause for the delay. Id. § 821.11(a); Administrator v. McKinney, NTSB Order No. EA-5284 at 3 (2007) (stating that, "the Administrator's mailing of the order starts the running of the clock," and that, "[u]nfounded mistakes as to procedures do not ... constitute good cause for noncompliance," citing Administrator v. Smith, NTSB Order No. EA-4485 (1996), and Administrator v. Near, 5 NTSB 994 (1986)). As we stated in Administrator v. Beissel, NTSB Order No. EA-5153 at 4 (2005), the Board consistently follows the good cause policy established on remand from Hooper v. NTSB and FAA, 841 F.2d 1150 (D.C. Cir. 1988), with regard to late-filed notices of appeal. On remand, we stated in Hooper that we "[intend] to adhere uniformly to a policy requiring the dismissal, absent a showing of good cause, of all appeals in which timely notices of appeal, timely appeal briefs or timely extension requests to submit those documents have not been filed." Administrator v. Hooper, 6 NTSB 559, 560 (1988).

In the case at hand, respondent's appeal of the law judge's decision appears to attempt to explain his tardiness by arguing that his lack of a permanent address due to a fire at his residence inhibited his receipt of orders, pleadings, and correspondence from the Administrator. We have reviewed the record and determined that such an argument is unavailing. First, the fire marshal's report indicates that a fire occurred on September 15, 2005, in Hayes, Virginia. The record, however,

shows that the Administrator sent the Order of Suspension to respondent on November 14, 2005, to his address in Westminster, Maryland. All of respondent's correspondence with the Safety Board, as well as any correspondence that he sent to the Administrator, contains the same Westminster, Maryland return address as that to which the Administrator sent her order. Moreover, we note that the Safety Board's Rules of Practice allow parties to request an extension of their filing deadline, where circumstances establishing "good cause" for such an extension exist. 49 C.F.R. § 821.11(a).

In addition, respondent still has not provided an explanation for his tardiness in submitting his appeal on December 21, 2005. Respondent's deadline for filing an appeal from the Administrator's November 14, 2005 order was December 5, 2005, according to 49 C.F.R. § 821.10, which governs the computation of time in regulatory enforcement cases. Respondent neither provided reason for his delay of more than two weeks, nor attempted to articulate good cause for this particular delay; indeed, as described above, respondent's cursory appeal letter merely appears to attempt to explain his failure to oppose the Administrator's request for dismissal.

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's appeal is denied.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.